

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-05-IH-2737
Spectracom, LLC)	NAL Account No. 200732080004
)	FRN No. 0003730710
Applicant for Assignment of Private Land)	
Mobile Stations WNFD452, WNHG245 and		
WNHU507		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 13, 2006

Released: November 13, 2006

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find that Spectracom, LLC ("Spectracom"), applicant for assignment of Private Land Mobile stations WNFD452, WNHG245, and WNHU507 (the "Stations"), apparently willfully violated Section 1.948 of the Commission's rules¹ by taking control of the Stations and operating those Stations without prior FCC notification and approval. Specifically, Spectracom took control of the Stations in June 2005, but failed to file an assignment application until November 14, 2005.² We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that Spectracom is apparently liable for forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. In June 2005, Spectracom purchased the Stations from Robert Crow, DBA Valley Comm. of Monte Vista, Co. ("Valley Comm").⁴ On November 14, 2005, Spectracom filed the Application for Commission consent to the assignment of the licenses from Valley Comm to Spectracom.⁵ Spectracom reported in the Application that the assignment had already occurred.⁶ In response to a telephone inquiry from the Wireless Telecommunications Bureau licensing staff regarding the answer to Question 7 in the Application, Spectracom responded on November 23, 2005, and explained that it had purchased the community repeaters from Valley Comm in June, 2005.⁷ Spectracom further asserted, in its response, that it

¹ See 47 C.F.R. § 1.948.

² See FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control, File No. 0002379825, at 1 ("Application").

³ See 47 U.S.C. § 503(b).

⁴ See Letter from Paul McCarty, Spectracom, LLC, to Sharon Weigle, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated November 23, 2005 ("McCarty Letter").

⁵ See *id.* at 1.

⁶ See Application at 1, Question 7.

⁷ See McCarty Letter at 1.

began operating the systems on the date of purchase and continued until the date of the response on November 23, 2005.⁸

3. On November 23, 2005, the Commission sent a letter to Spectracom indicating that the assignment in question was apparently consummated prior to Commission approval.⁹ In the same letter, the Commission consented to the assignment of licenses without prejudice to subsequent enforcement action.¹⁰ Spectracom did not file a notification of consummation following the consent to assignment as required by Section 1.948(d), and therefore is not the licensee of record for the Stations.¹¹

III. DISCUSSION

4. Section 1.948 of the Commission's rules requires that "Authorizations in the Wireless Radio Services may be assigned by the licensee to another party, voluntarily or involuntarily, directly or indirectly, or the control of a license holding such authorizations may be transferred, only upon application to and approval by the Commission."¹² Thus, under Section 1.948 of the Commission's rules, a licensee in the Wireless Radio Services involved in an assignment of authorization must apply to and receive authorization from the Commission regarding the terms of such transfer before the transfer is consummated.¹³ In the instant case, the record shows that Spectracom purchased three licenses for the Stations from Valley Comm in June 2005 and immediately began operating the systems without prior FCC approval.¹⁴ Therefore, these assignments were in violation of Section 1.948 of the Commission's rules.

5. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹⁵ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹⁶ Based on the evidence before us, we find that Spectracom, LLC apparently willfully violated Section 1.948 of the Commission's Rules by failing to notify and receive approval from the Commission for the assignment of three licenses prior to consummation of the transaction.

6. Pursuant to Section 1.80 of the Rules, the base forfeiture amount for engaging in an unauthorized transfer of substantial control of a licensee is \$8,000.¹⁷ Section 1.80(b)(4) of the Commission's rules also specifies that, in determining the amount of a forfeiture penalty, the Commission or its designee will take into account "the nature, circumstances, extent, and gravity of the violations and, with respect to the

⁸ *See id.*

⁹ *See* Letter from Tracy Simmons, Associate Chief, Licensing Operations, Public Safety and Critical Infrastructure Division, Federal Communications Commission, to Spectracom, LLC, Attn. Paul Michael McCarty, dated November 23, 2005.

¹⁰ *See id.*

¹¹ *See* 47 C.F.R. § 1.948(d).

¹² *See* 47 C.F.R. § 1.948(a).

¹³ *See id.*

¹⁴ *See* McCarty Letter at 1.

¹⁵ *See* 47 U.S.C. § 503(b).

¹⁶ Section 312(f)(1) of the Act, which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" 47 U.S.C. § 312(f)(1). *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁷ *See* 47 C.F.R. § 1.80 (2005).

violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁸ If we multiply this amount by the number of licenses at issue, we would find Spectracom apparently liable for a forfeiture of \$24,000.¹⁹ In the instant case, the assignment of the licenses resulted from a single transaction. We note that, in an analogous situation, the Commission held that multiplying this base forfeiture amount by the number of licenses at issue would result in an excessive forfeiture, and that the number of licenses involved should be considered an aggravating factor.²⁰ Considering the circumstances of this case, the nature of the licenses at issue, the relatively brief period of operation (approximately five (5) months) prior to filing the Application, the relatively few authorizations at issue, and our precedent, we find that a reduction in the total forfeiture amount is appropriate. Applying the factors set forth in Section 1.80 and Section 503(b)(2)(D) of the Act to the instant case, we conclude that Spectracom is apparently liable for a \$12,000 forfeiture.

IV. ORDERING CLAUSES

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's Rules, Spectracom, LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$12,000 for willfully violating Section 1.948 of the Rules.²¹

8. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within 30 days of the release date of this *Notice of Apparent Liability for Forfeiture*, Spectracom, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL Acct. No. and FRN No. referenced in the caption. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

10. **IT IS FURTHER ORDERED** that the response, if any, shall be mailed to Hillary S. DeNigro, Acting Chief, Investigation and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Suite 4-C330, Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

11. **IT IS FURTHER ORDERED** that the Commission shall not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that

¹⁸ 47 C.F.R. § 1.80(b)(4). This rule implements Section 503(b)(2)(D) of the Act, which requires that these factors be considered by the Commission or its designee when assessing forfeitures. *See* 47 U.S.C. § 503(b)(2)(D).

¹⁹ *See* 47 C.F.R. § 1.80.

²⁰ *See Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9672 (2000) (considering voluntary disclosure, duration of period of unauthorized operation prior to filing corrective applications, and the number of licenses involved to be important factors in determining the forfeiture amount to be \$40,000 for the unauthorized substantial transfer of control of 17 licenses).

²¹ *See* 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 1.948.

accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Associate Managing Director -- Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.²²

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Spectracom, LLC at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro
Acting Chief, Investigations and Hearings Division
Enforcement Bureau

²² See 47 C.F.R. § 1.1914.